

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local)	
Exchange Carriers)	

**SUMMARY OF THE NEW MEXICO ATTORNEY GENERAL’S TESTIMONY
IN THE STATE PROCEEDING**

INTRODUCTION

Pursuant to the New Mexico Public Regulation Commission’s order to “prepare and file summaries of the proceedings” the NM Attorney General proffers this summary of her testimony in New Mexico’s unbundled network element proceedings.¹ The FCC seeks comment on how to conform its network element unbundling rules to the Court of Appeals remand in U.S. Telecom Assoc. v. FCC, 359 F.3rd 554 (D.C. Cir. 2004), including “how best to define relevant markets [and] ... how to apply the [FCC’s] unbundling framework to make determinations on access to individual network elements.”² The FCC determined that it is further required to “analyze impairment for all ‘telecommunications services’ and ...that the impairment analysis must account for

¹ *In the Matter of Implementation of a Batch Hot Cut Process and In the Matter of Impairment In Access to Local Circuit Switching for Mass Market Customers*; New Mexico Public Regulation Commission Case Nos. 03-00403-UT and 3-00404-UT; Order on Staff’s Motion for Clarification, Sept. 14, 2004, (hereinafter “NM Impairment Proceedings”).

² *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; WC Docket No. 04-313, CC Docket No. 01-338; Order and Notice of Proposed Rulemaking, released August 20, 2004 at ¶s 9-11, (hereinafter “Unbundling NPRM”)

specific characteristics of the market in which a particular requesting carrier operates.”³ During the state proceeding addressing these issues the New Mexico Attorney General offered testimony analyzing the FCC’s Triennial Review Order.⁴

Summary of the New Mexico Attorney General’s testimony.

I. Market Definition

The Attorney General specifically advocated against using “metropolitan statistical centers” (MSA) to define a “market area.” Reasons against using an entire MSA as a definition for market are that the area is too large and would mask data and conclusions possible from a more granular analysis. CLECs do not approach a potential market as heterogeneous as an entire MSA. Such a definition would run into the difficulties described by the FCC in their Triennial Review Order.⁵

Instead the Attorney General urged the PRC to review data from individual wire centers, and if warranted by the data, to aggregate certain wire centers. This information has been developed already, and is readily accessible by the carriers. In addition, Qwest’s “Batch Hot Cut” process is dependant on, and implemented from; data collected at the wire center level. The product dimension for the market should include at a minimum plain old telephone service (POTS), long distance, and vertical features.⁶

If there are sufficient wire centers in density zone 1, that should constitute one market for purposes of offering unbundled local switching. For instance, the Albuquerque market area should be re-scoped to consider inclusion of only wire centers

³ *Id.* at ¶ 9, fn. 35.

⁴ *Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers, Implementation of the Local Competition provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), *corrected by* Errata, 18 FCC 19020, (hereinafter “Triennial Review Order”).

⁵ NM Impairment Proceedings, Testimony of David Brevitz at 10. (hereinafter Brevitz Testimony).

⁶ *Id.* at 12-15.

WC Docket No. 04-313

CC Docket No. 01-338

Summary of the NM Attorney
General’s Testimony

in density zone 1. These wire centers correspond to the only locations in New Mexico where CLECs are purchasing mass-market loops.⁷ Tying the market area definition to individual wire center data allows the rules to reflect market realities, and avoids needless theoretical arguments about expanding the market. For example, at this time it does not appear that “enhanced electronic loops” (EELs) are utilized, and are thus not a suitable basis for expanding the geographic scope of a market.

II. FCC Triggers on a Market-by-Market Basis

A. Markets Where Triggers Are Claimed To Be Satisfied

The Qwest assertion that “neither the [self-provisioning trigger or the wholesale] trigger requires the switches to be physically located in the same market as the retail customers the CLEC is serving” is only partially accurate.⁸ The possibility still exists that state commissions *may* consider switches not located in a particular market for the trigger analysis, but they are not required to. Such an approach allows state commissions to consider additional costs and conditions, such as back haul, when determining if it is economical for a CLEC to use a particular switch.⁹

Qwest did not supply enough data and analysis to overturn the FCC’s presumption of impairment for mass market switching in New Mexico’s density zone 1. There is contradictory information in the state proceeding as to whether or not CLECs are actively providing voice service to mass-market costumers with a particular switch. Data from both the mass market and the enterprise market seem to be aggregated. Qwest depends on the existence of tariffs and websites to support the assertion that CLECs have

⁷ NM Impairment Proceedings, Direct Testimony of Nita Taylor for QWEST Corp. at 19.

⁸ Id., pg. 4, ln. 8.

⁹ Brevitz Testimony at 18-22.

WC Docket No. 04-313

CC Docket No. 01-338

Summary of the NM Attorney

General’s Testimony

deployed switches in New Mexico and are actually providing service to mass-market customers. Qwest's testimony did not specifically cite any information that was supplied in discovery, and some of the information provided by other parties was contradictory to the assertions made by Qwest. For example both Time Warner Telecom and MCI stated that they do not supply voice service to residential or small business customers in New Mexico. Qwest has not explained these statements during its participation in the NM Impairment Proceeding.

B. Markets Where Triggers Are Not Satisfied

The following factors are of critical importance to an analysis of whether the market is suitable for multiple, competitive supply of the local switching function:¹⁰

1. *The extent of actual availability of unbundled loops, following the FCC's decision to eliminate unbundling requirements associated with certain types of loops.*

If there is a finding of "no impairment", the FCC must be absolutely sure that CLECs have access to loops. There is a clear assumption that if the requirement to provide unbundled local switching is removed, which also eliminates UNE-P, that CLECs will still have access to UNE loops from the ILEC to combine with the CLECs own facilities to continue providing service to the customer. If this assumption is not correct, the lack of access to UNE loops would constitute a potentially material operational and economic barrier to the provision of telecommunications services by CLECs. CLECs should truly have broad access in the market to UNE-L before the UNE-P option is removed via a determination that unbundled local switching no longer needs to be provided. Currently there is not enough information on the record to determine the availability of UNE-L in the Albuquerque and Santa Fe markets. For a legally sufficient

¹⁰ Id. at 26-30.
WC Docket No. 04-313
CC Docket No. 01-338
Summary of the NM Attorney
General's Testimony

analysis, complete data on loop composition including IDLC (integrated digital loop carrier) and copper loops, is needed on an individual wire basis in the defined market area. Finally, there is insufficient data as of yet to determine that loop database and inventory systems contain adequate information.

2. *The operational consequences associated with a physical network change from UNE-P to UNE-L.*

Using UNE-L instead of UNE-P to serve a customer creates the likelihood of service disruptions. Before a finding of “no impairment” the FCC must be sure that the physical change of the network is minimal enough that customer service will not be unduly interrupted.¹¹

3. *The untested nature of the batch hot cut process.*

To date, the Attorney General is unaware of any New Mexico customer being switched from the ILEC to a CLEC using the “batch hot cut process” under actual operating circumstances. Further testing is needed before the process is instituted in the wholesale market. Uncertainty surrounds just which loops Qwest proposes to include in the process and which loops could be excluded. The current definition – “only voice grade analog loops where facilities can be reused, and which therefore do not require the dispatch of a field technician” – may be too narrow.¹²

4. *The growing importance of “bundling” of retail mass market telecommunications service offerings.*

Both CLECS and ILECs are increasingly bundling services, such as voice, vertical features, long distance and various types of internet access. When analyzing the impairment issue the FCC should consider how disruption of bundled packages currently

¹¹ *Id.* at 33.

¹² *Id.* at 34.

provided by CLECs using UNE-P can be avoided if switching for mass market customers is no longer required on a UNE basis.¹³

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Respectfully Submitted,

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¹³ Id. at 36.
WC Docket No. 04-313
CC Docket No. 01-338
Summary of the NM Attorney
General's Testimony